



FSA Newsletter April 2006



Kaoru Yosano (Minister of State for Economic & Fiscal Policy and Financial Services) delivers an address at an information meeting on the facilitation of year-end lending (February 27).



Kaoru Yosano (Minister of State for Economic & Fiscal Policy and Financial Services) receives a courtesy call from Christine Lagarde, Foreign Trade Minister of the French Ministry of Economy, Finance and Industry (February 23).

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[Topics]

Overview of Cabinet Order to Partially Revise the Enforcement Regulation of the Insurance Business Law

Aiming to improve the effectiveness of supervision and promote flexible pricing of insurance products while ensuring that insurance premiums are set rationally, reasonably and fairly, the Financial Services Agency (FSA) released its draft “Cabinet Order to Partially Revise the Enforcement Regulation of the Insurance Business Law” and “Comprehensive Guidelines for Supervision of Insurance Companies” on Thursday, November 24, 2005, and solicited public opinions through Monday, December 26. In response to the solicitation, a total of 33 comments were submitted from 16 individuals and organizations. Based on their comments, the Comprehensive Guidelines for Supervision of Insurance Companies were partially revised. The revised guidelines will take effect on April 1 along with a Cabinet Order to partially revise the Enforcement Regulation of the Insurance Business Law.

1. Objectives of the Revision

Management efforts of insurance companies to improve the efficiency of their operations should be reflected appropriately and in a timely manner on insurance premiums. Based on this belief, FSA hopes to simplify its product review, especially with respect to the part of insurance premiums that is not directly tied to actuarial computations, improve the effectiveness of its supervision by executing substantive monitoring of operating expenses, and promote flexible pricing of insurance products while ensuring that insurance premiums are set rationally, reasonably and fairly. To achieve these goals, the Enforcement Regulation of the Insurance Business Law and the Comprehensive Guidelines for Supervision of Insurance Companies were partially revised.

2. Overview of the Revision

The following simplification steps will be implemented as the result of the upcoming revision:

(1) Simplified Product Review Pertaining to Portions of Insurance Premiums Not Directly Tied to Actuarial Computations

Descriptions regarding assumed rates of expense will be eliminated from the statements of estimation methods. Specific and detailed descriptions concerning assumed operating expense will not be required.

The Guidelines will include a statement confirming the fact that the provisions of Item 4, Paragraph 1 of Article 5 of the Insurance Business Law (Prohibition of Unfair and Discriminatory Treatment in Insurance Premiums) and those of Item 5, Paragraph 1 of Article 300 of the law (Prohibition of an Offer of Other Special Privileges) will continue to apply as before.

(Note) With respect to monitoring, detailed periodic reports by product, etc. will be required of insurance companies separately for the purpose of establishing the relationship between historical operating expenses and insurance premiums.

(2) Other Simplification Measures

Information required to be included in the statement of the method of operation will be limited to that which is truly necessary, recognizing the effectiveness of supervision.

Partial Amendment of the Comprehensive Guidelines for Supervision of Insurance Companies

On February 28, 2006, the Financial Services Agency (FSA) revised the “Comprehensive Guidelines for Supervision of Insurance Companies” (“Guidelines for Supervision”).

The latest revision affects two areas. They are (i) requirements for “Policy Overview” and “Warning Information” documents, and (ii) a revision of the Guidelines for Supervision to encourage improvement of the advertisement review system. The summary of these changes is explained in the following paragraphs:

1. “Policy Overview” and “Warning Information” Documents, Etc.

1. Development Leading to the Revision

- (1) The “Interim Summary of Issues: How Information Should be Supplied When Selling and Soliciting Insurance Products,” released in July 2005 by the “Study Team on Insurance Product Sales and Solicitations,” summarized the following issues:
 - (i) Implementation of the following measures would be effective when insurance product purchase is solicited:
 - Specifying key information pieces that are offered so as to limit the information volume to a size that does not discourage average consumers from wanting to understand products.
 - Clearly specify minimal key information pieces in each product category.
 - (ii) Information must be sorted into the following groups to clarify key items and furnished to customers:
 - Information that is necessary for customers to understand an insurance product (“Policy Overview”).
 - Information that insurance companies should supply to customers to alert their attention (“Warning Information”).
 - (iii) With respect to the content of “Policy Overview” and “Warning Information,” a framework should be established in the form of a law or regulation that takes account of product characteristics, etc. As for detailed items in individual product categories, the industry should establish self-imposed guidelines.
- (2) It was agreed that the following revision to the Guidelines for Supervision would be made and clarification achieved with respect to the framework of information to be described in the “Policy Overview” and “Warning Information,” the methods of describing and explaining such documents that provide these pieces of information, etc., based on the above-mentioned Interim Summary of Issues.

2. Description of the Revisions

- (1) Major pieces of information to be described in the “Policy Overview” and the “Warning Information” are as follows:

<<Policy Overview>>

- (i) Mechanism of the product, (ii) description of guarantee offered, (iii) major riders that can be added and their summary explanations, (iv) insurance period, (v) underwriting terms (the insurance amount, etc.)

<<Warning Information>>

- (i) Cooling-off period, (ii) duty of disclosure, (iii) main exclusions, (iv) grace period for premium payment, policy lapse and revival, etc., (v) cancellation and whether or not a cash surrender value is paid.

(Note) The written documents providing the “Policy Overview” and the “Warning Information” must provide an insurance company contact for filing complaints and making inquiries, as well as a statement that a customer can lodge a complaint or make an inquiry with an office of an association that the insurance company is a member and that handles complaints and consultation.

- (2) The revision also stipulates that the following system is established with respect to the methods of describing and explaining the “Policy Overview” and the “Warning Information”:

(i) Method of Description

- Presentation, including the font size and layout, that facilitates understanding by consumers, such as the minimum font size of 8.
- The language that is used must be clear and accurate.
- Specific numeric information has to be provided to consumers when there is information that needs to be presented with the use of specific numeric data (such as the insurance period, insurance amount and insurance premium).
- Care must be taken to limit to the information volume to about what can be presented in approximately a double-sided A-3 size sheet for the “Policy Overview” and the “Warning Information” combined so as not to discourage consumers from attempting to absorb the information.
- Separation and independence from other written documents.

(ii) Method of Explanation

- The fact that it is important to read written documents describing the “Policy Overview” and the “Warning Information,” that it is important to read the portions of the documents where information that is especially disadvantageous to consumers, such as main policy exclusions, and that there is a possibility that roll-overs and conversions will be disadvantageous to consumers should be explained orally.
- Adequate time should be allowed for consumers to understand the content of “Policy Overview” and that of the “Warning Information” when issuing these written documents.

II. Revision of the Guidelines for Supervision to Promote the Improvement of the Advertisement Review System

1. Development Leading to the Revision

Advertisements, etc. about insurance products are made frequently in a variety of ways through various media, including newspapers, TV and pamphlets that are used by insurance solicitors.

The impression of insurance products that average consumers develop based on advertisements, etc. greatly influences their desire to purchase such products. Considering that insurance products have become increasingly diverse and complex, their fair presentation in advertisements, etc. is believed to have become all the more important.

FSA has monitored presentations in advertisements in an effort to protect user needs and ensure thorough compliance with user protection rules. At the time, the agency has decided to adopt the following revision to the Guidelines to Supervision in order to further strengthen the insurance company advertisement review system:

2. Overview of the Revision

(1) Addition of Caution to be Used in Establishing Internal Regulations to Ensure Fair Presentation

- **Prevention of Erroneous Recognition of Excellence and That of Erroneous Recognition of Advantages**

Examples have been added with respect to information items that require caution so as not to give a policyholder a false impression of remarkable excellence or remarkable advantages when excellence or advantages of the guarantee provided by an insurance product are presented.

- **Presentation Based on Objective Facts**

A statement has been added to question whether or not asserted information is objectively verified when, for example, terms that directly indicate the highest grade or other ranking in the industry are used.

- **Presentation of Over-the-Counter Products Sold by Banks**

A statement has been added to question whether or not the fact that products being promoted are insurance products of an insurance company is presented properly so that they are not mistaken by consumers as deposits, etc.

(2) Alerts Importance of the “Policy Overview” and the “Warning Information”

A new stipulation was added, requiring a statement to alert consumers about the importance of reading the “Policy Overview” and the “Warning Information” in accordance with the presentation media and the content presented.

(3) Establishment of an Adequate Review System to Ensure Fair Presentation

The following points were added as cautions to be exercised in establishing an adequate advertisement review system, including legal checks:

- (i) Does the system ensure that reviews of presented information are conducted without any omissions with the adoption of a method such as central control of solicitation materials, etc. at the head office?
- (ii) Is the system designed to check the consistency of presented information across pamphlets, policy summary and other materials?
- (iii) Is the system designed to analyze problems of presentation that are pointed out in complaints by policyholders, etc., and take proper action for improvement in the event problems are recognized?

The foregoing summarizes the major contents of the latest revision. These provisions take effect on April 1,

2006. (If legitimate circumstances prevent insurance companies from taking action on the portions relating to the “Policy Overview” and the “Warning Information), however, postponement of the implementation of the portions is permitted until September 30, 2006.) FSA too will endeavor to reflect these changes smoothly on its supervisory operation.

Status of Measures taken by Financial Institutions to Combat the Problems of Counterfeit ATM Cards (as of the End of December 2005)

The Financial Services Agency (FSA) conducted a questionnaire-based survey of 1,727 private financial institutions (banks, shinkin banks, credit unions, labor banks and agricultural and fisheries cooperative credit unions) to find out the “Status of Measures taken by Financial Institutions to Combat the Problems of Counterfeit ATM Cards” as of the end of December 2005. The results of the survey were released on February 10, the date on which the “Law to Protect the Holders of Counterfeit and Stolen ATM Cards” went into effect.

The results of the previous survey (as of the end of April 2005) were released on June 24, 2005. In the latest survey, some of the survey questions were revised.

The following are major changes from the previous survey:

- number of financial institutions that issue IC cash cards: 6 28
- that have adopted biometric identification: 2 15
- that have applied film on ATM screens to prevent peeping: 352 881
- that have adopted a system to detect abnormal withdrawals from ATMs: 60 335
- that have created a manual to respond to victims: 57 258

The following are major findings in newly added questions:

- number of financial institutions that have adopted a mechanism to individually detect PINs that are easy to guess and suggest to change PINs: 206
- where cardholders can set a limit on the amount of ATM cash withdrawals: 1,561
- that keep security video camera images of ATM corners for at least three months: 1,145
- that have opened a specialized desk for damage recovery: 310

Financial institutions must choose their countermeasures for counterfeit ATM card problems by considering their client and operational characteristics. It is not the intention of FSA to require that institutions implement all the items that are included in the latest survey. Nevertheless, FSA finds it very important that all financial institutions continue to take measures to prevent damage and take proper actions when a cardholder suffers from damages in accordance with the “Law to Protect the Holders of Counterfeit and Stolen ATM Cards.”

[From the Office of International Affairs]

WTO Financial Services Negotiations

1. Introduction

Since the WTO Doha Round was launched in 2001, talks have continued in order to meet the negotiation deadline set for the end of 2006. As you may know, the World Trade Organization (WTO) is an international organization that is the pillar of the multilateral free trade system, comprising approximately 150 formal members.

WTO negotiations cover a wide range of areas, including services negotiations, which the Financial Services Agency is involved in. The Agency is mainly responsible for financial services, and, approximately, once every other month, FSA officials in charge travel to Geneva, the location of the WTO's secretariat, to conduct negotiations with officials from other countries on liberalization.

In this newsletter, I will attempt to briefly explain the WTO financial services negotiations while interjecting my personal views that are based on my experience with actual negotiations.

2. Position of Financial Services Negotiations

Financial services negotiations represent one area of services negotiations. Much of the time, attention in Japan focuses on WTO negotiations regarding trade in goods, particularly in the area of agriculture. The importance of services negotiations, however, cannot be overlooked when one looks at the macroeconomic structure of Japan. The "Japan's Basic Strategy for the WTO New Round Negotiations" (released in October 2002 on the Foreign Ministry's website), which present Japan's overall strategies, mention the fact that service industries account for over 60% of Japan's economy.

The fact that services represent a large portion of the Japanese economy does not automatically mean that all services are important in the context of WTO negotiations. We need to clearly determine which specific service industries are internationally competitive in what types of business operations. Then, what can we say about financial services in this respect?

Following the collapse of the bubble economy, the international competitiveness and presence of Japan's financial services sector declined as international business operations were streamlined or slashed. With non-performing loan write-offs largely behind them, however, Japanese financial institutions are now moving in the direction of reinvigorating their international operations, mainly in emerging market economies of Asia. Some of you may have noticed frequent newspaper coverage of Japanese non-life insurance companies and banks expanding their international operations. Financial and economic stimulation in Asian emerging market economies as the result of financial liberalization by itself would be beneficial to both these countries and Japan, which has strong ties to Asia.

Recognizing these factors, the Financial Services Agency has placed importance on its negotiations to liberalize financial services. In its "Program for Further Financial Reform -Japan's Challenge: Moving toward a Financial Services Nation," released in December 2004, the Agency advocates for active participation in WTO negotiations. At the same time, the Government of Japan positions financial services as one of the most important areas of services negotiations.

3. Goal of WTO Negotiations

The goal of WTO financial services negotiations, in essence, is the facilitation of the activities of Japanese financial institutions in foreign markets. Financial markets of major developed countries are relatively open. In contrast, some emerging market economies, which have grown at a fast pace, discriminate against foreign financial institutions or have regulations to hinder their activities.

Various restrictive provisions, such as a ceiling on the percentage of equity participation in banks by foreign financial institutions and a ban on certain business activities conducted by foreign insurance companies, are incorporated in these countries' WTO liberalization schedules. Negotiations are therefore conducted to have such restrictions either removed or eased.

Frequently, Japanese corporations that expand to foreign markets, and especially those that are small and medium-sized, are financed by Japanese financial institutions. As a consequence, interest in Asian emerging market economies, in which many Japanese corporations have expanded in recent years, is growing. The Financial Services Agency is therefore conducting on-going negotiations for liberalization, mainly with these

countries.

4. Historical Development of Negotiations and Problems Encountered

In December 2001, the Financial Services Agency commenced its survey mainly through industry organizations, to find out what is desired from WTO member countries in the area of liberalization. Based on the results of the survey, the Agency formulated its initial request in June 2002. Following this request, the Agency conducted bilateral negotiations mainly with Asian emerging market economies, including China, India and ASEAN member countries. Offers made by these countries entailed some improvements but were not satisfactory. The FSA prioritized its request to only the areas of key concerns, and resumed its negotiations by presenting the revised request in February 2005. Once again, however, the agency was unable to secure satisfactory offers.

These negotiations are carried out in a cycle that starts with a survey of Japanese financial institutions' needs, and moves on to the submission of a request, bilateral negotiations for liberalization, an offer from the negotiating country, and re-negotiation. The process itself is not particularly complex, but it is not easy to secure a solid outcome.

Inherently, countries that receive requests are under no obligation to commit themselves to additional liberalization measures. It is therefore theoretically possible for them to continue refusing requests. One might think that establishing standard criteria of commitment for liberalization would solve the problem. Unlike tariff negotiations, however, it is extremely difficult to set objective numerical targets to be achieved by individual countries in service negotiations.

Other reasons for the difficulty that are specific to financial services negotiations include the cautious stance taken by many developing countries toward their financial markets, which are the economic infrastructure in any country, due to their experience related to financial crises. Another reason is that the whole structure of negotiations tends to be one-sided, in that developed countries, which have already achieved liberalization, demand concessions from developing countries.

Furthermore, the fact that the status of negotiations at the WTO is not necessarily communicated accurately or promptly to the financial authorities (who are called "financial experts" in the WTO language) of developing countries is a large obstacle to negotiations, although this may seem trivial at first glance. To feel out an agreement that would be acceptable to both developed countries and developing countries, it is important that financial authorities of developed countries and those of developing countries exchange opinions about the possibilities of liberalization while also touching upon the regulatory aspects so that the concerns of developing countries are gradually assuaged. However, even building foundations for such talks becomes a challenge when responsible officials of financial authorities do not actively take part in negotiations. By capitalizing on the channels of communication that were built during the EPA negotiations, the Financial Services Agency is calling upon the financial authorities of Asian emerging market economies to actively participate in financial services negotiations.

5. Approaches Taken by the Financial Services Agency

The Financial Services Agency constantly strives to facilitate negotiations so as to promote liberalization of emerging markets by overcoming the challenges described above. Specifically, we have adopted the following approaches:

The first one is collaboration with countries that promote liberalization. Some of Japan's requests to foreign countries contain over 20 items. Considering that many of these requests contain multiple elements, a considerably greater number of demands are placed in reality.

It is impossible to reach a point of concession in negotiations without a careful discussion of individual elements. This, however, takes an enormous amount of time. In almost all services negotiations, careful discussions cannot be held unless we study the relevant laws and regulations of the country with which we are negotiating in detail and resolve all the questions one by one.

For this reason, we make it a point to exchange information with liberalization promoting members, such as the United States and EU, to efficiently move forward with discussions. We also work to reach consensus with other liberalization promoting members concerning the basic policies of negotiations so that we are in step with one another.

The second tactic is the prioritization of our negotiation agendas, combined with flexibility. Oftentimes, officials of developing countries in charge of negotiations are overwhelmed by wide-encompassing requests from

various countries. It is therefore important to recognize the need to facilitate internal consultation on the side of requested members and prioritize the contents of our requests or add flexibility to what we request (such as incorporation of a phase-in period or limitations on the scope of liberalization). This will ensure that the developing countries do not develop a fear that they are being pressured in the direction of liberalization by developing countries simply to meet their own business interests. A determination must therefore be made as to which request items are important for business and their feasibility based on information about the negotiating country's laws and regulations, as well as their domestic development.

The third is to ensure compatibility with the negotiation policies of the Japanese government. Since negotiations are not meant to end with just an exchange of opinions, interests have to be reconciled through bargaining at the final stage. Such bargaining includes bargaining in individual fields within the service sector, bargaining in the entire service sector, as well as bargaining in the entire WTO negotiations that contain sectors other than the service sector too. Positioning of financial services as Japan's "offensive" chip in these expansive bargaining scenes is the key to successful financial services negotiations. For this reason, we not only keep close contact with the officials of the Japanese Mission in Geneva who are in charge of financial services, but also maintain a close working relationship with the Foreign Ministry officials who coordinates the entire negotiations by sharing information about the substance of requests and coordinating negotiating strategies taking account of the entire WTO negotiations.

6. Conclusion: Latest Progress and Future Outlook

Before concluding, I would like to touch upon the latest development in the WTO negotiations and their future outlook.

With the negotiation deadline approaching at the end of 2006, the Hong Kong Ministerial Conference was held last December. Reflecting a strong sense of crisis among the member countries about service negotiations, the Hong Kong Ministerial Declaration agreed to initiate plurilateral negotiations in each of the service fields.

Plurilateral negotiations are negotiations that are participated in by some member countries, or more precisely by the requesting and requested countries. In the financial services sector, pro-liberalization countries, including Japan, the United States, EU, and Canada, jointly presented the collective request on financial services to emerging market economies, such as China, India and ASEAN members, on February 28, 2006.

It is envisaged that the collective request will send a clearer message to requested members by presenting uniform liberalization targets; pro-liberalization countries individually presented their request until such joint action. Moreover, given that plurilateral negotiations will be conducted sector by sector, emerging market economies are expected to send their financial experts to the negotiation tables, which we believe will lead to more productive and constructive negotiations than in the past. While there is not much time left before the negotiation deadline, we hope to actively conduct negotiations so as to facilitate the international activities of Japan's financial institutions.

[Hot Picks from the Financial World]

* We deliver the hottest information of the times in this section, selected from among questions and answers given at the Minister's press conferences etc. If you wish to find out more, we invite you to visit the "[Press Conferences](#)" section of Financial Services Agency's website.

Q. What are your thoughts on the meaning or purpose of the Financial Instruments and Exchange Law (what is called the Investment Services Law) that received Cabinet approval today?

A. The Financial Instruments and Exchange Law was approved as an amendment to the Securities and Exchange Law because we have reached the stage where the fast-growing variety of financial products available, aside from securities, necessitates the establishment of regulations for a range of financial products, as well as regulations across the financial industry overall.

There are two important points to the Financial Instruments and Exchange Law. The first is that it is structured to ensure fair trading. The second is that it contains comprehensive regulations on information disclosure so that investors can make decisions based on accurate facts. I think that these two points probably capture the essence of the law, but its ultimate aim is to promote the growth of the market and protect investors by extending the scope of general regulations to so-called financial products in order to combat the expected rise in foreign exchange margin transactions and other types of transactions which were unheard of a decade ago.

(from [the press conference following a cabinet meeting on friday, March 10, 2006](#))

Q. The Tokyo Stock Exchange has delisted Livedoor following filing of a criminal complaint against former executives of Livedoor including Takafumi Horie, the former President, by the Securities and Exchange Surveillance Commission. While the impact on investors is likely to be huge, please outline your views on the lessons this incident had for the market as well as the challenges it presents for the market's future administration.

A. The actions of the accused in the Livedoor incident are typical examples of Securities and Exchange Law violations. Spreading rumors, carrying out fraudulent accounting and, as is in this case, doctoring financial statements are all typical breaches of the Securities and Exchange Law that have occurred in the past. I, therefore, do not believe that the actions of the accused constitute a new type of crime.

In any case, we have asked the courts to try the case, and we will receive a verdict at some point in the future.

I believe the Livedoor incident has been taken as a social warning to listed companies that issue stock, as well as securities companies, the Tokyo Stock Exchange, auditing companies and general investors that trading must take place according to the rules.

(from [the press conference following a cabinet meeting on Tuesday, March 14, 2006](#))

Q. What is your view on the series of misstatements discovered in the descriptions of installment plan insurance products made by insurance companies?

A. These misstatements were probably not intentionally made. Instead, they probably resulted from a series of unfortunate events, such as mistakes made in writing the policy clauses or explaining the products, as well as lack of understanding on the part of the sales people.

Nevertheless, I believe that the insurance companies concerned must be prepared to take adequate measures to compensate policy holders for the trouble caused.

(from [the press conference following a cabinet meeting on Tuesday, March 14, 2006](#))

A. There were expressions identified in an individual case that could have made the policyholder mistake the assumed rate of interest for the fixed rate of interest. Further investigation revealed that such expressions were broadly being used by other companies as well, so the Financial Services Agency (FSA) has already decided to

inspect them all at once.

(from [the press conference following a cabinet meeting on Friday, March 17, 2006](#))